

**6th Air Mobility Wing  
MacDill AFB, FL**



**Military & Civilian  
Alternative Dispute Resolution Program**

## **Table of Contents**

### **MACDILL AFB EEO MEDIATION PROGRAM**

<b>Status of MacDill AFB EEO Mediation Program</b>	<b>i</b>
<b>7 Key Components of Mediation</b>	<b>ii, iii</b>
<b>EEO Mediation Program</b>	<b>Pgs 1-11</b>
<b>Attachments:</b>	
<b>Sample Mediation Confirmation Letter</b>	<b>Attach 1</b>
<b>Sample Mediation Agreement</b>	<b>Attach 2</b>

### ***Status of MacDill AFB ADR/Mediation Program***

- To implement the foregoing ADR mandates, Equal Employment Opportunity (EEO) staff, after receiving extensive training in ADR concepts and procedural methodology, assessed the ADR needs of MacDill and drafted the following program to match local needs with existing Air Force resources. Initial Design Team consisted of Ms. Barbara D. Beougher, 6 AMW/EEO Program Manager, Mr. Raymond O. Brady Jr., 6 AMW/EEO Specialist, and Mr. Ray Ulrich, 6 MSS/DPF. Mr. Bradley T. Neff, 6 AMW/EEO Specialist contributed to the updated revision.
- The perception of credibility, confidentiality, and neutrality, plus a limited budget were considered. MacDill AFB is a small to medium sized base comprised of several large independent organizations. (Total civilian population served by our EEO office is 2,561).
- Established MacDill AFB EEO Mediation Program “Owner” as 6 AMW/CC, the immediate supervisor of 6 AMW/CCD and 6 AMW/MEO.
- 6 AMW/CC has identified Mr. Raymond Brady Jr. and MSgt Carneal Smith as the EEO and MEO ADR Program Managers (MPM).
- Mediators have been identified, trained and certified by Mr. Brady and MSgt Smith for Mediation Program involvement activities. Periodic training will be provided locally, at Maxwell AFB-Gunter Annex, or at other approved training locations in coordination with the 6 MSS/DPCT (civilian training) section.
- Positive factors to using MacDill AFB mediators include the fact they are readily available, have a loyalty and investment in a smooth working base “culture”, and knowledge of Air Force missions and goals.
- Preliminary discussions related to mediation process initiatives have been held with Mr. Romeo Garcia (Lackland AFB, Air Force Benchmark program); Dr. Rick Voyles, Atlanta Justice Center, Inc.; Mr. James Lambright, Defense Equal Opportunity Management Institute; Mr. Solomon Starks, Jr., Bolling AFB; and Mrs. Barbara Swisher, Holloman AFB, NM.

## **THE 7 KEYS TO SUCCESS IN MEDIATION**

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| <b>SUPPORT</b>   | 1. Support by the Wing Commander via oral and written communications of his goal to have an on-going viable mediation program  |
| <b>INDEPENDENCE</b>  | 2. Establishment of the independence of the EEO Mediation Program from traditional ties with personnel, legal, union or other traditionally advocate divisions   |
| <b>MEDIATORS</b>   | 3. Sufficient numbers of trained mediators to routinely accomplish mediation functions on short notice   |
| <b>PROGRAM DESIGN</b>  | 4. A program design that best fits mission accomplishment, economic, and personnel realities of MacDill AFB, i.e., internal USAF mediators, external USAF mediators, external mediators who are independent contractors and not Federal employees  |
| <b>LOGISTICS</b>   | 5. Sufficient on-call and regular duty mediators, physical, logistical, and financial resources to handle referrals in a timely manner, at a minimum one full-time Manager, and Assistant trained in mediation, as well as in the administration of a mediation program; a permanent location on base for the program, and at least one conference room and a waiting area for mediation sessions. |
| <b>EXPEDITED<br/>PROCEDURES<br/>CONSISTENTLY<br/>APPLIED</b>                             | 6. A policy to ensure that parties are provided Mediation in 30 days or less, unless verified by independent documentation that the proposed type of schedule would clearly be a hardship on the parties in this specific case.  |
| <b>MEASURABLE<br/>PERFORMANCE:<br/>AUTHORITY/<br/>RESPONSIBILITY/<br/>ACCOUNTABILITY</b> | 7. Responsibilities of Mediation Program Managers, if no staff is allocated, include:<br><br>(a) Marketing in an ethical manner to all potential users<br><br>(b) Continuous communication with the mediator pool for support, training and quality control  |

- (c) Fair procedures which allow full utilization of the mediator pool balanced with the needs of the parties in a particular case; i.e., each case needs to be reviewed in light of the issues and the parties;**
- (d) Confidentiality consistent with the Federal laws and with USAF policy and procedures;**
- (e) Scheduling that accommodates all parties' needs, but does not unnecessarily delay the mediation conference;**
- (f) Prompt processing of payment of Mediator Fees and other costs, if any;**
- (g) Data collection and monitoring of results;**
- (h) Established legal means through the administrative processes or the courts are available, the credibility of mediation is best defined at base level.**

**USAF's guiding principle in establishing mediation programs that are visible, credible, and used is the steadfast belief that making mediation happen is a CASE-BY-CASE effort. Each case must be handled as if it were the only case in the system, realizing that the proper handling of the parties and issues in a case before the mediation conference is as equally important as the mediation conference in resolving the dispute. Highly skilled mediators dedicated to resolving complaints at the lowest possible level must accomplish implementation of a program at MacDill AFB.**

**This plan is designed to provide you with the tools to that vital link between cases and mediators. Mediation will make a unique professional contribution not only to the Air Force, but also to each individual desiring to use mediation.**

# **Alternative Dispute Resolution**

## **MacDill AFB Florida**

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### **Introduction**

Alternative Dispute Resolution (ADR) is a term used to describe a variety of approaches to resolve conflicts in lieu of traditional adjudication or adversarial methods. While ADR does not replace traditional processes, its techniques are proven to reduce time, money, and anguish compared to formal complaint processes. Through successful ADR, the parties involved in a conflict maintain more control over the resolution-attempt process, the outcome, and their resulting relationship. ADR emphasizes cooperation in identifying mutual interests and developing creative solutions to resolve disputes.

Some examples of ADR include:

- The parties act alone in exercising guided “innovative” conflict resolution actions through informal discussion and negotiation.
- Much more common in ADR is using an objective third-party neutral to conduct mediation, facilitation, conciliation or a fact-finding inquiry for early neutral evaluation of the facts.
- Combinations and hybrids of above techniques

### **ADR History and Mandate**

ADR techniques have been used for centuries. The increasing litigious nature of our society today, compelled Congress to pass the Administrative Dispute Resolution Act of 1990 to test the utility of authorizing and promoting the use of ADR in the Federal government. Upon completion of the test period, a number of agencies, including the Department of the Air Force, testified before Congress that the use of ADR had a significant positive impact on dispute resolution in their agencies. Congress then passed permanent legislation as the ADRA of 1996.

The Secretary of the Air Force’s January 1993 ADR policy memorandum encouraged the use of ADR to reduce the time and costs of settling disputes and empowered officials to resolve issues in controversy more creatively and expeditiously. Also in 1993, Air Force Policy Directive (AFPD) 36-12 established the Air Force policy to use ADR “whenever possible” to resolve civilian personnel disputes. Department of Defense Directive 5145.5 on ADR was issued in April of 1996 and it requires all DoD Components to “establish and implement ADR policies and program.” Secretary of Defense Cohen issued an ADR memorandum in June of 1997, in which he expressed his “strong support for the v

## Overview of ADR: “Fitting the form to the Fuss”

The following chart provides a simple model of the dispute resolution continuum. ADR methods fall into three broad categories based on the type of assistance the disputant, manager or the Commander needs:

1. Negotiation Assistance
2. Outcome Prediction
3. Private adjudication

NEGOTIATION	ALTERNATIVE DISPUTE RESOLUTION			LITIGATION
Unassisted Negotiations	Assisted Negotiations	Outcome Prediction Assistance	Private Adjudication	Public Adjudication
	Facilitation  Mediation	Early Neutral Evaluation  Fact Finding	Binding Arbitration	EEOC MSPB FLRA  Federal District Courts  Federal Circuit  Supreme Court

Moving from left to right, the chart depicts increasingly adversarial, costly and time-consuming modes of dispute resolution. Equally important, moving from left to right the parties find themselves losing their ability to control the process of resolving the dispute and its final outcome.

### Assisted Negotiation

Facilitation or mediation offers a viable option to the formal public adjudication system. **Mediation** has shown to be especially effective when the dispute involves a clash of personalities between the parties. In such cases, a neutral third party can keep disputants focused on the issues and interests involved and move them towards crafting a mutually acceptable settlement.

## **Outcome Prediction**

If both parties need an evaluation of the dispute, then outcome prediction techniques such as early neutral evaluation, fact finding (conducted by a credible subject matter expert), or “other ADR method,” such as a non-binding opinion of an EEOC or MSPB official may serve both parties better than the conventional resolution system.

## **MacDill AFB ADR Program Vision Statement**

To provide “A dynamic, diverse, and interactive problem solving methodology, enabling both military and civilian employees to have a full-range of open and constructive communication, for achieving early and effective resolution of disputes.”

## **Guidelines for Civilian Employee Disputes Appropriate for ADR**

1. Guidelines for acceptable cases: If both parties voluntarily agree to use an ADR process to resolve an issue in controversy, then ADR may be appropriate, subject to the guidelines listed in paragraph 3 below. Command may encourage management’s participation.
2. Guidelines for unacceptable cases: If any of the following factors are present, then use of ADR is **inappropriate**:
  - a. Allegations of fraud, waste, abuse or disciplinary actions
  - b. Criminal charges
  - c. Specific types of family or neighborhood disputes
  - d. Precedent setting cases
3. If any of the following factors are present, then use of ADR **may not be appropriate**:
  - a. A definitive and authoritative decision is needed as a legal precedent
  - b. The matter involves significant issues of Air Force policy that require procedural development, and ADR will not assist with policy development
  - c. Maintaining an established policy and/or avoiding variations in decision is of special importance
  - d. The matter significantly affects **non-parties** to a particular mediation effort
  - e. A full public record of the proceeding or resolution is important
  - f. The agency must maintain continuing jurisdiction over the matter with the right to alter the resolution as circumstances demand.



Use of ADR is voluntary. Accordingly, the complainant and management official with authority to resolve the conflict must both agree to use ADR to resolve the dispute at hand. Command officials may order management officials to participate.

Use of ADR does not toll applicable time limits in traditional administrative dispute procedures. If all applicable time limits are satisfied, and if ADR does not result in a resolution of the problem, the EEO complainant has the right to pursue the matter through formal EEO channels. If the matter does not involve the EEO process, the employee is free to use an appropriate employee or Air Force grievance forum. ADR is not a substitute for missing filing deadlines. Accordingly, employees considering formal complaint avenues, such as through the EEO or grievance systems, are responsible for requesting mediation within the time frames normally applicable for pursuing these processes (e.g., EEO complaint within 45 calendar days of the discriminatory incident; a negotiated grievance within 15 work days, etc.)

## **Mediation**

Mediation involves the use of a neutral third party trained to administer the mediation process to facilitate communication and resolution by opposing parties. The mediator does not act as a judge or jury. The only parties involved are the complainant, respondent, a management official with authority to resolve the situation, the mediator and, if requested, representatives for each party. According to union contract at MacDill AFB and recent court decisions (Luke AFB), union representation during the informal stage of EEO mediation is not acceptable. Mediation is not a legal proceeding and lawyer representation is not prohibited. However, mediation has a higher rate of success when only parties who are involved in the dispute are in the mediation session. Therefore, the MacDill ADR Program discourages the involvement of legal representatives and prohibits union official participation in the informal stage of mediation. The Legal office and CPO office have officials available to review final settlement agreements before signing and the mediator coordinates their approval of the content. This confidential, non-adversarial process requires the parties themselves to design a mutually agreeable solution by openly discussing issues and interests. Mediation has been proven to save valuable time, money and resources. Mutual agreements “work” better because they are fashioned by the involved parties rather than legislated or dictated by an uninvolved decision-maker.

## **Mediation Program Purpose**

The purpose of MacDill’s Mediation Program is to provide the lowest possible dispute resolution avenue for appropriated and non-appropriated funded federal civilian employees, as well as military members assigned to MacDill AFB. While mediation is a voluntary option and does not replace formal systems, the goal is for all concerned to request mediation before seeking redress through informal and /or formal processes, such as equal employment opportunity (EEO) complaints.

## **Mediation Cases**

Virtually any type of workplace dispute, conflict, or dissatisfaction is a candidate for mediation; however, the guidelines below reflect the types of situation, which are acceptable or unacceptable for mediation. Anyone can request mediation services: employees, commanders, supervisors, union officials, legal office, co-workers, etc.

### **Guideline for acceptable cases**

- Both parties must agree to use it
- The matter involves employment-related workplace conflict(s)
- The matter relates to a factual dispute, not a legal or precedent-setting matter
- The catalyst for the complaint does not belong to a formal administrative or legal system
- The matter may need to overcome personality and/or individual communication problems
- Parties may desire/want to maintain, establish, or restore a good working relationship
- Interpersonal dispute is impacting unit's productivity and morale
- The issues must be under the control of installation management
- Demands/views of either party may be unrealistic; neutral third party may help with a reality-check
- Traditional processes may be unlikely to successfully resolve the matter
- The parties want to settle the dispute quicker than traditional processes allows
- Compared to potential cost and disruption of using traditional methods, issues are relatively minor

### **Guidelines for unacceptable cases**

- Allegations or the matter in dispute relates to fraud, waste, abuse, or disciplinary actions
- Criminal charges are pending or a likely outcome regarding the matter in dispute
- The matter might relate to Uniform Code of Military Justice (UCMJ) charges
- There is (might be) clear and convincing evidence of sexual harassment or discrimination
- The dispute involves significant legal or policy matters
- A definitive or authoritative resolution is required for precedent-setting value
- Award of compensatory damages is the primary or only motivation
- The need for uniform treatment of others is involved
- The agency must maintain jurisdiction over the matter, not the involved individuals
- No local party has the authority to settle the case
- Contract disputes
- The matter involves a significant family or neighborhood dispute

## Structure and Purpose of the MacDill AFB Mediation Program

The Mediation Program is structured to serve and benefit all Wing organizations as well as associate unite, i.e. Defense Commissary Agency, and tenant units serviced by the Civilian Personnel Flight and the EEO Discrimination Complaints Office (USCENTCOM, USSOCOM, JCSE, NAVCENT, US Army Recruiting Battalion, MEPS, NAVCENT, etc.)

This program has the full support of the 6 AMW Wing Commander. The 6 AMW/CV has been assigned supervisory responsibilities of the EEO Mediation Program.

The office symbol is 6 AMW/CCD and 6 AMW/MEO. The phone number for civilian EEO is (813) 828-2505/9205 and 828-3333 for military MEO. The Mediation Program Managers are located in Building 299, 8208 Hangar Loop Drive, Suites 5 & 15, MacDill AFB, FL 33621.

The purpose of the MacDill AFB Mediation Program is:

- To help manage conflict effectively by using ADR, when appropriate, to aid in resolving civilian and military personnel work place disputes;
- To provide additional tools to resolve disputes at the earliest possible time and at the lowest possible organizational level;
- To save time and money whenever possible related to dispute resolution case actions; and
- To promote justifiable, fair, and sensible employee-centered outcomes to dispute matters.

### Mediation Program Manager

The EEO Mediation Program Manager (MPM), through 6 AMW/CC delegation, has the authority to approve or disapprove cases for mediation. The MPM for both civilian EEO and Military MEO may request assistance from the Staff Judge Advocate or other officials in deciding on accepting cases for mediation.

If mediation does not result in a resolution of the problem, the complaining party has the right to pursue the complaint through other normal channels available to them. It should be emphasized that while mediation may extend the time available to attempt resolution (90 days), it is **not** a substitute for missing filing deadlines in other forums. Civilian employees considering formal complaint avenues, such as EEO, are responsible for requesting mediation within the time frames normally applicable for pursuing these processes (e.g., EEO complaint within 45 calendar days of the discriminatory incident; etc.). The Mediation Program Manager (MPM) responsibilities are assigned to both civilian and military program managers.

### **MPM duties and responsibilities include, but are not limited to:**

- Serve as contact point for implementing the process regarding case intake and functional activities
- Make decision on assignment of trained mediator to cases, and arrange for mediation sessions
- Provide written notification to all parties to the ADR process activity
- Notify appropriate offices (SJA/CPF) to be available for settlement agreement coordination actions
- Ensure agreements are reviewed based on technical, regulatory, and legal requirements
- Serve as manager to coach, mentor, evaluate and direct mediation program operations
- Develop and oversee marketing operations and functions
- Recruit, select, train, supervise, motivate, mentor, and evaluate mediator corps activities
- Maintain sufficient number of mediators for base population and mediation program workload
- Complete and submit required mediation reports

Written comments about program operations or the civilian or military Mediation Program Manager, may be directed to the Vice Commander, 6 AMW/CV, 8208 Hangar Loop Drive, Suite 1, MacDill AFB, FL 33621

### **On-Call Mediator Corps**

The “local” program mediator corps consists of MacDill AFB civilian employees and military members trained to conduct single mediations. As an Alternative for complex, high-level cases, there is the option of using (a) a cadre of Air Force installation employees trained to conduct mediation; (b) The AF Mediation Mentor Program; (c) When necessary and funds are available, a locally-contracted experienced mediator; (d) Contracted mediator paid for by Air Force General Counsel (AF/GC) office, or (e) an OCI mediator from DoD for EEO cases that have reached the formal stage.

### **On-call mediator responsibilities and duties include, but are not limited to:**

- Provide responsive mediation services for civilian and military personnel as authorized
- Create and maintain a positive and neutral mediation process environment
- Continually seek better ways to resolve disputes by participating in on-going training, reading, role-playing, and mentoring activities
- Assist in mediation program marketing efforts

### **Recruitment and Selection**

Recruitment of mediators will be conducted as needed to ensure a sufficient number of trained mediators are readily available for local case assignments. Recruitment may be done through announcements in the Base Bulletin, the Thunderbolt Newspaper, and Civilian Personnel Newsletter.

MacDill AFB civilian employees are eligible to be selected as mediators for the EEO ADR Program provided they and their supervisors agree to the certification training and on-call case assignment activities. Temporary employees may be selected only if they have had mediation training. New employees who move to MacDill AFB from other installations who are trained and experienced mediators may be added to the mediator corps, as well as employees who independently obtain recognized mediation training, by providing their training certificate to the Mediation Program Manager.

Until an Air Force skills code is developed for ADR mediators, they will be appointed as on-call mediators rather than a collateral duty.

Successful mediators possess special knowledge, skills, and abilities (KSAs). These include the ability to glean and analyze relevant information from disputants; communicate information to others; demonstrate active listening; suspend judgment; manage conflict; facilitate communication between disputing parties; structure and draft clearly-worded settlement agreement; as well as demonstrate patience, empathy, impartiality, creativity, commitment to using the mediation process, confidence, competence and a positive attitude.

The MPM is authorized to make selections. However, he/she will seek suggestions and advice from others – to include, commanders and the Civilian Personnel Flight. The primary selection criteria are based on demonstrated and recommended KSAs and military training records. An individual's current "regular duty" may be considered if a perception of bias can be made. Neutrality, and its appearance, is paramount.

## **Mediator Training Program**

At the core of every quality program are well-trained employees; the Mediation Program is no exception.

- Volunteers must receive a minimum of 24 hours mediation training. Newly trained mediators will observe at least one session and participate as a co-mediator in two sessions with an experienced EEO or MEO staff mediator before their first solo mediation session.
- Volunteers must agree to participate in an on-going training and mediation-mentoring program.
- Mediator training meetings will be held on topics such as improving communication skills; mediator ethics; various complaint systems; terms of the union contract (as may be applicable); interest-based bargaining techniques; role-playing; improving parts of mediation procedure (i.e., opening statements; what to listen for in parties statements, moving to caucus, identifying impasse, etc.), overview of personnel policies, procedures and points of contact, etc.
- To enhance their skills, Mediators are encouraged to develop their skills by mediating for other federal agencies and participating in certification training programs.

- **Mediators cannot represent or serve on behalf of the 6 Air Mobility Wing or the United States Air Force when providing services as a mediator outside of the agency they are employed by.**

## **Mediator Case Assignment**

The MPM is responsible for assigning mediators to conduct mediation sessions. When assigning mediators, the MPM will apply an equitable rotation basis in consideration of mediator's strengths related to the problem issues to be discussed, organization where complaint originates, availability for the scheduled mediation date, etc. The MPM may identify an alternate "mediation trainee" who may participate as an observer, if the parties do not object. Generally, mediations will be conducted in the mediation program designated conference room; however, the mediator or MPM may suggest an available alternate, neutral facility.

Other than training costs, there are no costs for each mediation conference (unless a contract mediator is used). Organizations not geographically located on MacDill AFB, will be requested to pay mileage and related costs for mediator expenses to travel to the site, unless they prefer to pay the organization's participants to travel to MacDill AFB.

The MPM is available to provide support before, during, and after mediation sessions. Debriefings between the mediator and MPM will be held to discuss the mediator's strengths, weaknesses, and lessons learned during the conference. All settlement agreements will be reviewed and approved by the respective MEO or EEO Program Manager, SJA and CPF Chief. The mediator will not relay confidential or substantive information discussed during the mediation.

Mediators will be evaluated via several methods, including self-evaluation, an after-mediation survey completed by mediation participants, and by MPM observation.

## **Complaints About Mediation Services**

Complaints about mediators are to be directed to the Mediation Program Manager. Resulting action taken depends on the impact ramifications of the overall situation. For example, if participants believe the mediator was biased, a new mediation conference with a different mediator may be considered.

If employees feel the local program is not fulfilling its responsibilities, complaints should be directed to the Vice Commander, 6<sup>th</sup> Air Mobility Wing for action.

## **Mediation Case Administration**

All requests for mediation must be made through the Mediation Program Manager (MPM) office. Employees are encouraged to talk with their supervisors about mediation, and they can

make written or verbal requests through the supervisor or chain-of command who, in turn, will forward the request to 6 AMW/CCD or 6 AMW/MEO respectively. Preferably, the mediation description and intake meeting is conducted face-to-face with the MPM (or the lead mediator), so the process can be clearly and completely explained, diagrammed, or outlined.

The MPM will help the party bringing the matter before the MPM office determine who the appropriate respondent is, keeping in mind that the organization needs to be represented by someone with knowledge of the facts, and by someone having the authority to settle the dispute.

### The MPM:

- Identifies and schedules the mediator and the mediation conference facility
- Provides participants a detailed confirmation letter and rules on the mediation process
- Apprises appropriate offices (usually CPF and SJA) to be available for settlement coordination
- Follows up with phone call to participants a day or two before the scheduled mediation session
- Sets up a mediation case file to include mediation request form, confirmation letter, boiler plate agreement language; minutes, after action forms, etc.
- Ensures settlement agreements are promptly coordinated through the appropriate offices
- Reviews and monitors mediated settlement agreements relative to compliance with agreement terms
- Forwards and receives mediator and mediation evaluation forms as appropriate
- Faxes copy of all Settlement Agreements to AFCARO

## Marketing

Marketing is extremely significant and important because even if we build it, no one will come if we don't sell the program's benefits! Marketing is absolutely **vital** to mediation program success.

Recognizing budget limitations for the program, MPM will make maximum use of people (e.g., mediators, Civilian Personnel Flight) and other programs and publications already in place to market and educate the workforce. Actions may include: Civilian Personnel Newsletter, NAF Newsletter, new employee orientations, Family Support Center, Union meetings, commanders' calls or staff meetings, labeled letters and mail-outs to the workforce, brochures, comments within the base bulletin and subject matter information during supervisory training.

## Mediation Program Goals and Success Indicators

Program Goals include:

- A positive, credible reputation of the program and the professional ability of mediators
- To be recognized as efficient and professional, based on independent merit of program activities

- A decrease in the use of formal complaint systems by MacDill AFB employees
- A positive workplace climate resulting from the success as experience by the mediation process
- A dedicated physical mediation location and competent (neutral) mediation program manager

Success of the Mediation Program will be determined by a reduction, over time, in the use of formal complaint systems, an increasing number of employees selecting mediation to resolve conflicts, and general satisfaction with process as evidenced by after-mediation evaluations.

### **Mediation Program Review**

The appointed mediation program managers will meet as necessary, to review and assess progress toward program goals, recommend marketing and education activities, and if or when needed, recommend and coordinate revisions to program operations or modification of the mediation program.



## MEDIATION CONFIRMATION

(Date) \_\_\_\_\_

COMPLAINANT  
(Address)

MANAGEMENT OFFICIAL  
(Address)

RE: Mediation Conference Between  
\_\_\_\_\_, Complainant and  
\_\_\_\_\_, Management Official

As we discussed, mediation is a voluntary, informal and confidential process to resolve disputes. I am writing to confirm the scheduling of the mediation conference that we discussed. Because mediation may be new to you, I thought you should know what to expect.

### **A. Mediation Conference: Schedule, Expected Duration, & Location**

I will conduct the mediation at the location and time shown on the last page of this letter. It is not unusual for the mediation session to last 4-6 hours. If this amount of time is not possible, please advise me immediately and I will reschedule the mediation for another day or time.

### **B. What is Mediation and How Does it Work?**

**This is not a legal proceeding.** Equally important, as a mediator, I do not provide legal advice or legal counsel. Also important, by agreeing to mediation \_\_\_\_\_  
**Name of Complainant) is not** waiving his/her right to proceed with the formal legal dispute resolution process, provided that he/she files a timely complaint/grievance. Accordingly, if you are unsure of the amount of time you have to file a complaint or grievance, please be sure to check with your counsel or appropriate officials.

Success in mediation depends on all participants being prepared to participate fully in the mediation process, including presenting documentation you feel is necessary to support your position.

## **Phases of the Mediation Conference**

The mediation conference begins with an opening statement from me regarding my role as a neutral. I am not an advocate or legal representative for or against either party. After the opening statement, I will ask the Complainant/Grievant, to tell me in his/her own words about the complaint and what type of remedy he/she is seeking. I will then give the management representative an opportunity to describe the dispute from their standpoint. After the opening statements, you and the other party will enter into a joint discussion where clarifying questions can be asked and potential solutions, if any, can be discussed.

At this point, I may ask to meet privately (caucus) at least once with each participant. Information discussed in you caucus is given to me in confidence and will not be shared with anyone else, subject to the limitations discussed above. Following the caucuses, I may reconvene the joint session and determine if there is any area of agreement on any issue. If not, the parties will continue to negotiate, possibly re-caucusing with me until it is clear that a settlement is or is not going to emerge at this session. Either party will be free to consult with appropriate legal, union or management representatives to apprise them of their legal rights and/or authority to agree to certain terms in the proposed settlement agreement.

If a settlement is reached, I will draft the terms of a settlement agreement that is acceptable to all parties and, if present, their representatives. Appropriate management or legal personnel also will need to review, and authorize a commitment to the settlement terms before they are effective.

A signed settlement agreement is intended to be binding on the parties. Accordingly, the agreement can generally be used as evidence in a later proceeding in which either of the parties alleges a breach of the agreement. It is also important that the participants understand that any written agreement reached during the course of the mediation could eventually become public record.

## **Confidentiality**

Confidentiality is a critical part of the process. If you tell me something in private and ask me to keep it confidential, I am bound by law not to disclose this information voluntarily. There are some obvious exceptions to this rule, but I do not expect them to arise during our mediation. For example, if you confess to the commission of a criminal offense, or to an act of fraud, waste, or abuse or that you plan to commit a violent physical act, you or I may be required to share this information with appropriate authorities. If a judge determines that disclosure of our private confidential discussions is necessary to prevent a manifest injustice, establish a violation of law, or prevent harm to the public health or safety, we may be required by a court to disclose our private discussions. As a point of reference as to how often these circumstances occur, the Air Force has conducted hundreds of mediations to date and the **confidential discussions between a mediator and a party have never been disclosed by an Air Force mediator.**

Having said that, please remember that facts that were discoverable before the mediation session do not become confidential merely because they were presented during a mediation conference. It is only those things you say or write in confidence **to me during the mediation** that I will not disclose, unless one of the unusual exceptions previously addressed applies. This means that both the mediation agreement and the resulting settlement agreement, if any, are **not confidential**. For example, certain Air Force officials will have to review the proposed settlement agreement before it becomes binding on the Air Force – so the agreement itself cannot be kept completely confidential.

You must agree that, should this mediation not resolve your dispute, you will not request information from me in a future legal proceeding – unless of course, you have a dispute with me as a result of the mediation process. If anyone asks you to provide information about what was discussed in this mediation sessions, it is very important that you say nothing and that you **immediately notify** the Air Force Central Labor Law Office (CLLO) at DSN 226-9158 or (703) 696-9158. The CLLO will provide you legal advice about how to respond. As a matter of policy, the Air force will defend you and me against all discovery requests that seek information related to this mediation session.

### **Your Right to Representation**

Either party may choose to come to the mediation conference alone, with a representative, or with legal counsel. It is recommended by the Air Force that only the parties involved in the dispute participate in the session because the success rate is much higher when outside parties are not present. At MacDill AFB, the policy is to have outside parties wait in a private room for you to consult if you choose to and likewise with legal representatives. If you plan to have a representative present, please let me know as soon as possible so that I can be sure the other side has the opportunity to bring a representative as well.

### **Conclusion**

To sum up, mediation is an informal process designed to achieve a solution to the problem that satisfies all parties and negates the need for further legal action on anyone's behalf aside from those steps that may be agreed to as part of a settlement agreement. I look forward to working with you in an effort to resolve the dispute to everyone's satisfaction.

If you need more information, you may call me at \_\_\_\_\_ or fax me at \_\_\_\_\_.

### **MEDIATION CONFERENCE INFORMATION**

**Location:** EEO Office  
Wing Headquarters Building  
8208 Hangar Loop Drive, Suite 5  
MacDill AFB, FL 33621

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

Before I can mediate your case, Air Force Mediation Guidance requires me to obtain the following from you: 1) Mediation Confirmation inclusive of the Mediation Process  
2) Agreement to Mediate form. We recommend you keep a copy for your records.

Sincerely,

(Name and Title of Mediator)

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

## **AGREEMENT TO MEDIATE**

BASE DOCKET # \_\_\_\_\_

DATE \_\_\_\_\_

1. Undersigned parties, hereby agree to have mediation services provided for their dispute concerning:

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\_\_\_\_\_  
(Aggrieved Person/Representative)

\_\_\_\_\_  
(Management's representative)

2. The parties agree that \_\_\_\_\_ will be the mediator. All parties recognize that mediation is a voluntary settlement negotiation and that the mediator is not a judge and has no authority to force a settlement on the parties. The EEO office has 90 days to complete the mediation process.
3. If a mediation agreement is reached, the terms of the agreement will be binding on all parties. Moreover, the parties recognize that an agreement is confidential and will not set precedent in future disputes.
4. However, if an agreement is not reached, the designated mediator will process the dispute as an informal EEO complaint of discrimination pursuant to 29 CFR 1614.105(d).

\_\_\_\_\_  
(Aggrieved Person)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(EEO/ADR Program Manager)

\_\_\_\_\_  
(Date)